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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,733	08/29/2000	Victor M. Ilyashenko	B1029/7001	1310

7590

06/27/2002

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EXAMINER

VARGOT, MATHIEU D

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 06/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

HCT

## Office Action Summary

Application No.

09/445,733

Applicant(s)

ILYASHENKO

Examiner

M-VAR60T

Group Art Unit

1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 4/29/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-73 is/are pending in the application.
- Of the above claim(s) 1-30, 45-70, 72 + 73 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 31-44 + 71 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5, 7 + 11
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. Applicant's election with traverse of Group II, claims 31-44 and 71 in Paper No. 10 is acknowledged. The traversal is on the ground(s) that a search and examination of all the claims would present no undue burden on the examiner. This is not found persuasive because, as noted in the restriction, the groups do not share the same or corresponding special technical feature, as evidenced by US Patent 3,718,383, at least claim 1 being anticipated by the reference.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koike -514 (see Embodiment 1 at columns 16-17).

Koike -514 discloses the basic claimed method of making a gradient index POF by forming a preform rod containing a sheathing (the PMMA tube) and a polymeric core having a RI gradient disposed within the sheathing (ie, the polymerized MMA set therein containing a dopant) and spinning the preform to make an optical fiber with an attenuation of 98 dB/km at a wavelength of 580 nm (see column 17, lines 35-38). Given the disclosure throughout the patent, it is submitted that the spinning taught at column 17, line 21 "reads on" or would include "hot-drawing" as set forth in claim 71--ie, see the last paragraph of the abstract of Koike -514. Essentially, the applied reference fails to explicitly teach the instant draw rate of at least 3 m/min. However, it is

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submitted that one of ordinary skill in this art would know to employ as fast a draw rate as possible to minimize the formation time for the product--ie, for cost reasons. It is further submitted that the recitation of a minimum value for a parameter which the skilled individual knows should be maximized and furthermore would have been obtained through routine experimentation is prime facie obvious.

3. Claims 31-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koike -514 (see Embodiment 1 at columns 16-17) in view of Koike et al -621 (see col. 6, lines 47-67).

Koike -514 discloses the basic claimed process as set forth in paragraph 2, supra, lacking essentially the aspect of the sheathing monomer containing a dopant. However, Koike et al -621 discloses GI optical fiber making methods wherein the outer portions, inner portions or both contain a dopant -- see column 6, lines 47-67. Although the secondary reference extrudes the materials using concentric nozzles, the rationale for providing a dopant in the sheathing (and in the core, also) is found at column 7, lines 42-45--namely, to facilitate the formation of an optical fiber having a variety of refractive index distributions. It is submitted that one of ordinary skill in the art, desiring to make a certain RI profile, would have modified the method of Koike -514 with the inclusion of a sheath dopant as taught in Koike et al -621 for the reason disclosed therein. Further, the outer extruded portion of Koike et al -621 is seen to be equivalent to the instant sheath while inner portions would constitute the instant core.

31-44  
4. Claims 1-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,086,999. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because claim 14 of the previously issued US patent essentially sets forth in one claim what applicant is reciting in instant claims 31-35 and 44. The additionally claimed subject matter in the instant application (application of energy/heat during the formation of the core/tube and the monomers used for each) is submitted to have been well known in the art and obvious addendums to claim 14 of US Patent 6,086,999 to facilitate the formation of the optical fiber.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Vargot whose telephone number is 703 308-2621.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

M. Vargot

June 25, 2002

*M. Vargot*  
MATHIEU D. VARGOT  
PRIMARY EXAMINER  
GROUP 1300  
*6/25/02*